IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9930 of 1994

For Approval and Signature:

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAYNABEN SHANTILAL PANDYA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
Mr.Chetan Pandya for MR CV PRAJAPATI for Petitioner
Ms.Hansa Punani, learned AGP for Respondent(s) : 1 - 2.
Mr.Barot for MR HS MUNSHAW for Respondent(s) : 3,

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CORAM : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 03/03/2006

ORAL JUDGMENT

1. The petitioner, who is working as a Community Organiser, has filed the present writ petition, being aggrieved by the action of the Collector, Banaskantha District (respondent No.2) whereby the Resolution of the Palanpur Nagarpalika (respondent No.3) granting 2 advance increments to the petitioner, has been suspended. The petitioner is further aggrieved by the order of the Deputy Secretary(Appeals), Urban Development and Urban Housing Department, Gandhinagar dated 21.5.94 whereby the appeal of the petitioner against the aforesaid action of respondent No.2 has been dismissed.

2. It is the case of the petitioner that respondent No.3 -Nagarpalika granted two advance increments to the petitioner vide office order dated 9.3.93. This was done by the said Nagarpalika as per Resolution No.11 dated 28.4.88. The respondent No.2, on instituting suo motu proceedings under Section 258 of the Gujarat Municipalities Act, 1963 (herein-after referred to as “the Act”), vide order dated 7.10.93

permanently suspended the aforesaid Resolution. The respondent No.3. i.e. Nagarpalika appeared before the Collector and opposed the institution of suo motu revision by the Collector under Section 258 of the Act and also submitted its written reply. However the petitioner, who was the beneficiary of the two advance increments granted to her by the Nagarpalika, was neither issued a show cause notice nor given an opportunity of being heard by the Collector, before suspending the Resolution granting advance increments in her favour.

3. Being aggrieved by the aforesaid order of the Collector, the petitioner, alongwith two other similarly situated persons, preferred an appeal before the Deputy Secretary (Appeals), Urban Development and Urban Housing Department. This appeal was rejected vide order dated 21.5.94. Being aggrieved by the aforesaid action of the Collector and the appellate authority, the petitioner has approached this Court for the redressal of her grievances.

4. I have heard Mr.Chetan Pandya, learned counsel appearing vice Mr.C.V.Prajapati for the petitioner, Ms.Hansa Punani, learned AGP for respondents No.1 and 2 and Mr.Barot, learned counsel appearing vice Mr.H.S.Munshaw for respondent No.3,and have also gone through the material on record.

5. The main grievance of the petitioner is that before the exercise of suo motu powers by respondent No.2 under Section 258 of the Act, no notice was issued to the petitioner and neither was she given an opportunity to be heard. The benefit of two advance increments granted in her favour was withdrawn in a manner which is violative of the principles of natural justice.

6. Ms.Hansa Punani, learned AGP has submitted that the respondent No.3 i.e. Nagarpalika was heard by the Collector before passing the order of suspension of the Resolution granting two advance increments to the petitioner. Since it was the Nagarpalika who had

passed the said Resolution, an opportunity was given to it in order to represent its case.

7. Mr.Barot, learned counsel appearing for respondent No.3 has submitted that the petitioner is an employee of Palanpur Municipality and she was given the benefit of two advance increments due to the exemplary services rendered in implementation of the Family Planning programme although, there is no Government Policy for giving advance increments as such.

8. It is not disputed by the respondents No.1,2 and 3 that the petitioner herself was neither given any notice nor an opportunity to be heard by the Collector. Although, the appeal to the appellate authority was filed by the petitioner, that was an appeal against the order of the Collector by which the resolution granting the benefit of advance increments was suspended. This order was upheld by the appellate authority. The appellate authority has also not given any finding on the plea put up by the

petitioner that she was never given an opportunity of hearing by the Collector.

9. The learned counsel for the petitioner has relied upon **2000(4) GCD 3222(Guj) (Maniben Navabhai and others vs State of Gujarat and others)**. In this case also, Section 258 of the Gujarat Municipality Act, 1963 was invoked by the Collector without giving an opportunity of hearing to the petitioner. The Court held as under:

> "4. In view of the above position, in my opinion, the petition deserves to be allowed and is accordingly allowed. The order passed by the Collector is quashed and set aside being violative of principles of natural justice. It is, however, clarified that it is open to the Collector to take appropriate proceedings and to pass an appropriate order in accordance with law after observing principles of natural justice and the law laid down by this Court in H.H.Parmar.
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> 5.For the foregoing reasons, petition is allowed. Order passed by the Collector under Sec.258 dated 21st February, 1989 is quashed and set aside. Since I am setting aside the order only on the ground of non-observance of principles of natural justice, I do not wish to make any observations on the merits of the case and disposal of this petition will not come in the way of the Collector in taking appropriate action in accordance with law. Rule is made absolute. No order as to costs."

10. In my considered opinion, in the present case as well, the principles of natural justice have been violated by respondent No.2 since no notice or opportunity of hearing was given to the petitioner who was adversely affected by the order passed by him. It was incumbent upon the respondent No.2 to have issued notice to the petitioner who was the beneficiary of two advance increments, before any action was taken regarding suspension of the same. Merely hearing the Nagarpalika would not meet the requirements of law since it was the petitioner and not the Nagarpalika who was the affected party.

11. The decision of this court in (Maniben Navabhai and others vs State of Gujarat and others) (Supra) squarely covers the present case.

12. In view of the facts and legal position as stated herein-above, this petition is allowed. The order dated 7.10.93 of the Collector and consequently the order dated 21.5.94 of the Deputy Secretary

(Appeals) is quashed and set aside, being violative of the principles of natural justice. It is, however, clarified that the setting aside of these orders will not prevent the Collector from instituting appropriate proceedings, if thought necessary, and from passing an appropriate order, in accordance with law, after putting the petitioner to notice and giving her an opportunity of being heard. Nothing stated herein-above may be construed as expressing any opinion on the merits of the case. The petition is, therefore, allowed,as above. Rule is made absolute. No order as to costs.

(Smt.Abhilasha Kumari,J)

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